

Response Due Date: June 25, 2009

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Counsel for Ferndale Electric Company, Inc.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X		
In re	:	Chapter 11
	:	
GENERAL MOTORS CORP., <i>et al.</i> ,	:	Case No. 09-50026 (REG)
	:	
Debtors.	:	(Jointly Administered)
-----X		

**SECOND OBJECTION OF FERNDALE ELECTRIC COMPANY, INC. TO NOTICE OF  
(I) DEBTORS' INTENT TO ASSUME AND ASSIGN CERTAIN EXECUTORY  
CONTRACTS, UNEXPIRED LEASES OF PERSONAL PROPERTY,  
AND UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY  
AND (II) CURE AMOUNTS RELATED THERETO**

Ferndale Electric Company, Inc., (hereinafter, "Ferndale Electric"), a creditor and interested party, objects, on a limited basis, ("Objection") to the Notice of (I) Debtors' Intent to Assume and Assign Certain Executory Contracts and Unexpired Leases and (II) Cure Amounts Related Thereto ("Assumption Notice") served upon by the above captioned debtors and debtors-in-possession (collectively, the "Debtors") pursuant to the Court's Bidding Procedures Order (Docket No. 274). In support of the Objection, Ferndale Electric states:

1. On June 1, 2009 the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors are presently managing their properties and operating their businesses as debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. On June 2, 2009, this Court entered an order (the “Bidding Procedures Order”) approving the Debtors’ bidding procedures, which includes procedures regarding Debtors’ assumption and assignment of executory contracts.

3. Pursuant to the Bidding Procedures Order, the Debtors delivered the most recent Assumption Notice to Ferndale Electric dated June 15, 2009<sup>1</sup>.

4. The Debtors are parties to a blanket executory contract with Ferndale Electric.

5. The Debtors have proposed assuming and assigning Ferndale Electric’s executory contract as an Assumable Executory Contract pursuant to the Bidding Procedures Order (the “Designated Contract”).

6. Contained in the Assumption Notice is a username and password allowing Ferndale Electric to log onto the Debtors’ contract notice website. On the website, the Debtors identify \$168,275.14 as the amount allegedly owed to Ferndale Electric. This amount is substantially less than what is actually owed under the Designated Contract.

7. Ferndale Electric wishes to confirm that there are no alleged debits, credits, or claims subtracted from the stated Cure Amount or whether other orders, items or amounts which Ferndale Electric lists under other supplier codes are treated in this value.

8. Ferndale Electric objects to the Assumption Notice on the basis that the Cure Amount identified by the Debtors therein is inaccurate. Ferndale Electric asserts the true Cure Amount to be at least \$196,306.81, as evidenced by the spreadsheet attached as **Exhibit A**.

9. Ferndale Electric also objects to the extent that the Assumption Notice would allow payment of less than all pre-petition and post-petition obligations owed by Debtors to

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<sup>1</sup> Ferndale Electric also received an Assumption Notice dated June 5, 2009 (“June 5<sup>th</sup> Assumption Notice”). The login and password provided by the June 5<sup>th</sup> Assumption Notice did not contain any information on the assumed service contract or provide a Cure Amount. Ferndale Electric has objected to the June 5<sup>th</sup> Assumption Notice (Docket # 1871). The June 5<sup>th</sup> Assumption Notice and the more recent Assumption Notice have the same GM Contract ID numbers.

Ferndale Electric, as is required by Section 365 of the Bankruptcy Code. *In re Burger Boys*, 94 F.3d 755, 763 (2<sup>nd</sup> Cir. 1996).

10. “Section 365(b)(1) establishes a ‘conjunctive tripartite test’ for assuming an executory contract. The debtor must cure or provide adequate assurance that [the debtor] will cure any defaults, compensate or provide adequate assurance that [the debtor] will compensate the other party for any actual pecuniary loss resulting from the defaults, and provide adequate assurance of future performance. All three requirements must be met before the contract can be assumed.” *Aetna Casualty & Surety Co. v. Gamel*, 45 B.R. 345, 348 (N.D.N.Y. 1984) (citing *In re Luce Industries, Inc.*, 8 B.R. 100, 104 (Bankr. S.D.N.Y. 1980) *rev’d on other grds.*, 14 B.R. 529 (S.D.N.Y. 1981)). Ferndale Electric further objects to the extent the Assumption Notice would allow assumption of executory contracts without satisfying the requirements in Section 365(b)(1).

11. Because the authority upon which Ferndale Electric relies upon is incorporated into this Objection, Ferndale Electric respectfully requests that the Court deem satisfied or, alternatively, waive any requirement of the filing of a separate memorandum of law contained in Local Bankruptcy Rule 9013-1(a).

12. Ferndale Electric reserves any and all rights arising from or associated with the Designated Contract or subsequently Designated Contracts.

13. Ferndale Electric reserves the right to amend this Objection to include additional facts or arguments as may be determined by further investigation and also to raise such other and further objections to any proposed assumption and assignment or Cure Amounts with respect to Ferndale Electric’s Designated Contract.

WHEREFORE, Ferndale Electric respectfully requests that the Court enter an order (a) sustaining this Objection in its entirety (b) determine the appropriate amounts due to Ferndale Electric pursuant to Section 365 of the Bankruptcy Code, and (c) providing Ferndale Electric with such other and further relief as is appropriate.

Respectfully submitted,

**KERR, RUSSELL AND WEBER, PLC**

By: /s/ P. Warren Hunt

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Dated: June 23, 2009

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Debtors.	:	(Jointly Administered)
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 23, 2009, I electronically filed the foregoing Second Objection to the Notice of (I) Debtors' Intent to Assume and Assign Certain Executory Contracts and Unexpired Leases and (II) Cure Amounts Related Thereto, Exhibit A and this Certificate of Service with the Clerk of the Court using the ECF system which will send notification of such filing to all ECF participants. A copy of this document was also served on the following parties on June 23, 2009 via first class mail:

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Chambers Copy  
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United States Bankruptcy Court  
Southern District of New York  
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New York, New York 10004-1408

/s/ P. Warren Hunt  
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Dated: June 23, 2009